

Nos. 22-16914 & 22-16916

United States Court of Appeals for the Ninth Circuit

IN RE: APPLE INC. APP STORE SIMULATED CASINO-STYLE GAMES LITIGATION,

FRANK CUSTODERO, ET AL.,

Plaintiffs-Appellees,

v.

APPLE INC.,

Defendant-Appellants.

Appeal from the United States District Court
for the Northern District of California,
No. 5:21-md-02985-EJD (Hon. Edward J. Davila)

**UNOPPOSED MOTION OF APPLE INC. FOR EXTENSION OF
TIME TO FILE RESPONSE AND REPLY BRIEF**

Daniel M. Lifton
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8000

Mark A. Perry
Zachary D. Tripp
Crystal L. Weeks
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW
Washington, DC 20036
(202) 682-7000
mark.perry@weil.com

Counsel for Apple Inc.

MOTION FOR EXTENSION OF TIME TO FILE RESPONSE AND REPLY BRIEF

Under Circuit Rule 31-2.2, Apple Inc. respectfully moves for a 21-day extension of time to file its response and reply brief.

1. The current deadline for Apple's response and reply brief is January 12, 2024.

2. Counsel for Apple have numerous nondelegable deadlines and obligations in connection with other active matters in the weeks preceding and following January 12. Among other things, counsel will be:

- participating in a preliminary injunction hearing in *FTC v. IQVIA Holdings Inc.*, 1:23-cv-06188 (S.D.N.Y.), scheduled for November 20 through December 1, 2023;
- drafting a post-hearing brief in the same matter, due on December 7, 2023;
- drafting a response brief in *Epic Games, Inc. v. Apple Inc.*, No. 23-337 (U.S.), due December 8, 2023;
- drafting a reply brief in *Schwartz v. Miller*, No. 23-1343 (9th Cir.), due December 18, 2023;
- drafting a petition for certiorari in a copyright case, due in the U.S. Supreme Court on January 10, 2024;

- preparing for and attending trial in a securities matter, scheduled to begin on January 29, 2024;
- undergoing surgery on January 3 and 17, 2024.

3. Moreover, the current deadline falls shortly after the holiday shutdown period for Apple, as well as undersigned counsel's pre-planned holiday vacation.

4. Apple has not filed a previous motion for an extension of time to file its response and reply brief. Apple has taken one streamlined extension under Circuit Rule 31.2.2 and seeks only a three-week extension in addition to the 30 days provided to Apple via streamlined extension.

5. That modest additional three-week extension—up to and including February 2, 2024—would not prejudice Plaintiffs, inconvenience the Court, or unduly delay this appeal, which has not yet been scheduled for oral argument.

6. The Defendants-Appellants in *In re Google Play Store Simulated Casino-Style Games Litig.*, Nos. 22-16921, 22-16923, and *In re: Facebook Simulated Casino-Style Games Litig.*, Nos. 22-16888, 22-16889, are also seeking an identical extension to February 2, 2024. The parties thus continue to seek to proceed on a uniform briefing schedule.

6. Under Circuit Rule 31-2.2, counsel for Apple notified counsel for Plaintiffs of this motion. Plaintiffs' counsel do not oppose this request.

Respectfully submitted,

Daniel M. Lifton
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8000

s/ Mark A. Perry
Mark A. Perry
Zachary D. Tripp
Crystal L. Weeks
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW
Washington, DC 20036
(202) 682-7000
mark.perry@weil.com

Counsel for Apple Inc.

November 21, 2023

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 27, the undersigned counsel certifies that this document complies as follows: This motion complies with the type-volume limitation of FRAP 27(d)(2) because it contains 353 words (based on the Microsoft Word word-count function), excluding the parts of the motion exempted by FRAP 32(f). This motion complies with the typeface requirements of FRAP 27(d) and 32(a)(5) and the type style requirements of FRAP 32(a)(5)(A) and (a)(6) because it has been prepared in a proportionately spaced typeface using Century Schoolbook font in 14-point type.

s/ Mark A. Perry

MARK A. PERRY

WEIL, GOTSHAL & MANGES LLP

2001 M Street NW

Washington, DC 20036

(202) 682-7000

mark.perry@weil.com

November 21, 2023

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2023, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which will send notification of such filing to all ECF participants.

s/ Mark A. Perry

Mark A. Perry
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW
Washington, DC 20036
(202) 682-7000
mark.perry@weil.com

November 21, 2023

Nos. 22-16914 & 22-16916

United States Court of Appeals for the Ninth Circuit

IN RE: APPLE INC. APP STORE SIMULATED CASINO-STYLE GAMES
LITIGATION,

FRANK CUSTODERO, ET AL.,
Plaintiffs-Appellees,

v.

APPLE INC.,
Defendant-Appellants.

Appeal from the United States District Court
for the Northern District of California,
No. 5:21-md-02985-EJD (Hon. Edward J. Davila)

DECLARATION OF MARK A. PERRY

I, Mark A. Perry, declare as follows:

1. I am a partner at the law firm of Weil, Gotshal & Manges LLP. I am counsel of record for Apple Inc. in the above-captioned action. I am a member in good standing of the California Bar and this Court.

2. I submit this declaration in support of Apple's request for a 21-day extension of time to file its reply and response brief from January 12, 2023, to February 2, 2024. This is Apple's first request for an extension of time to file its response and reply brief, and it has taken one streamlined extension of time. Counsel for Plaintiffs do not oppose this request.

3. There is good cause for this request. Counsel for Apple have several pressing obligations that will take up substantial time over the coming weeks, including:

- participating in a preliminary injunction hearing in *FTC v. IQVIA Holdings Inc.*, 1:23-cv-06188 (S.D.N.Y.), scheduled for November 20 through December 1, 2023;
- drafting a post-hearing brief in the same matter, due on December 7, 2023;
- drafting a response brief in *Epic Games, Inc. v. Apple Inc.*, No. 23-337 (U.S.), due December 8, 2023;
- drafting a reply brief in *Schwartz v. Miller*, No. 23-1343 (9th Cir.), due December 18, 2023;
- drafting a petition for certiorari in a copyright case, due in the U.S. Supreme Court on January 10, 2024;

- preparing for and attending trial in a securities matter, scheduled to begin on January 29, 2024;
- undergoing surgery on January 3 and 17, 2024.

4. The current deadline also falls shortly after the holiday shutdown period for Apple.

5. These constraints make it difficult for Apple to prepare a brief that will be as helpful as possible to the Court absent the requested extension.

Respectfully submitted,

s/ Mark A. Perry
Mark A. Perry
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW
Washington, DC 20036
(202) 682-7000
mark.perry@weil.com

Counsel for Apple Inc.

November 21, 2023